

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 23 2007

SENSITIVE

In the Matter of)

MURs 5817, 5827, 5829, 5836,
5847, 5852, 5858, and 5863)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

DEBATE CASES (From The '06 CYCLE))

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated
matters) and are deemed inappropriate for review.

are forwarded to the Commission with a recommendation for dismissal.¹ The
Commission has determined that pursuing low-rated matters compared to other higher rated
matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to
dismiss these cases.

The Office of General Counsel scored MURs 5817, 5827, 5829, 5836, 5847, 5852,
5858, and 5863 as low-rated matters. In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the
complainants challenged whether the debate staging organizations and entities used and/or
properly construed pre-established objective criteria in order to determine whether a
particular candidate could participate in their debate.² In MURs 5827 and 5829, the

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² 11 C.F.R. § 110.13(c) provides that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use the nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate."

1 complainants claimed that the staging organization set up the seating for the debate in order
2 to advance one candidate over another in violation of 11 C.F.R. § 110.13(b)(2).³

3 In MURs 5817, 5836, 5847, 5852, 5858, and 5863, the complainants were third party
4 candidates who appeared to receive marginal electoral support and evidenced little to no
5 campaign organization. The staging organizations and entities in these cases claimed they
6 applied pre-established objective criteria in assessing whether to include or exclude
7 candidates from their debates.

8 In MURs 5827 and 5829, the complaints centered on the favorable seating assigned to
9 one candidate's supporters over another. The respondents in these matters asserted that the
10 seating design was unintentional and in any case did not violate the Commission's
11 regulations. Additionally, a claim that a \$200 corporate contribution was received by the
12 staging organization was refuted.

13 In reviewing the allegations and responses in these matters, and in furtherance of the
14 Commission's priorities and resources, relative to other matters pending on the Enforcement
15 docket, the Office of General Counsel believes that the Commission should exercise its
16 prosecutorial discretion and dismiss these matters. *See Heckler v. Chaney*, 470 U.S. 821
17 (1985).

18 RECOMMENDATION

19 The Office of General Counsel recommends that the Commission dismiss
20 MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863, close the files effective two
21 weeks from the date of the Commission vote, and approve the appropriate letters. Closing

³ 11 C.F.R § 110.13(b) provides that "[t]he structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that: (1) Such debates include at least two candidates; and (2) The staging organization(s) does not structure the debates to promote or advance one candidate over another."

these cases as of this date will allow CELA and General Law and Advice the necessary time
to prepare the closing letters and the case files for the public record.

Thomasenia P. Duncan
Acting General Counsel

3/22/07
Date

BY:

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Attachments:

Narratives in MURs 5817, 5827, 5829, 5836, 5847, 5852, 5858, and 5863

MURs 5827 & 5829

Complainants: MUR 5827 – John J. Mudd, on behalf of Montanans for Tester
MUR 5829 – Jaime MacNaughton

Respondents: MURs 5827 & 5829 – Resodyn Corporation
Lee Enterprises, Inc/Montana Standard
Only MUR 5827 – Friends of Conrad Burns-2006 and
James Swain, as Treasurer

Allegations: Complainants allege that Resodyn Corporation, along with the Montana Standard newspaper, structured a debate between Conrad Burns and Jon Tester in a way to ensure that Conrad Burns supporters were given prominent and visible positions (i.e., chair assignments) over Jon Tester supporters. Resodyn Corporation allegedly contributed \$200 to the debate in exchange for reserved seating, which totaled approximately 25-50 seats. There is a suggestion that since Resodyn Corporation had a long-standing close relationship with Conrad Burns, it is likely that Mr. Burns, and/or those in his campaign, knew of Resodyn's activities to support Mr. Burns and his campaign committee. Thus, the donation by the corporation for the reserved seating amounted to an in-kind contribution to the Friends of Conrad Burns-2006 committee.

Response: Resodyn Corporation responded by denying that it structured the debate to promote or advance one candidate over the other. Specifically, the seating arrangement did not involve the structure of the debate and did not advance Conrad Burns over Jon Tester. The fact that Resodyn Corporation had seats that were located in the center section of the audience could not have had an effect on the substance of the debate itself, such as the questions that were asked of the candidates or the ability of the candidates to respond to the questions. Additionally, Resodyn Corporation did not request reserved seating. Rather, the reserved seating was offered by the Montana Standard after Resodyn Corporation agreed to be a sponsor for the event. Friends of Conrad Burns-2006 responded that it did not cooperate or consult with Resodyn Corporation regarding its participation in the debate. The committee noted that it was unaware that Resodyn Corporation was a sponsor for the debate. The Montana Standard responded by claiming that it was unaware that the theater where the debate was held would be releasing reserved seats for Resodyn Corporation to supporters of any particular candidate, but assumed that the seats would be given to Resodyn Corporation employees. Once informed of the relationship between Resodyn Corporation and the Friends of Conrad Burns-2006, the Montana Standard refused to accept any funds from Resodyn Corporation to defray the costs of the debate.

1 **General Counsel's Note:** It appears that Resodyn Corporation's \$200 payment went
2 directly to The Mother Lode Theater where the debate was held and not to the Montana
3 Standard. Montanans for Tester filed a supplement to their complaint requesting that the
4 Montana Standard be dismissed after the Committee learned the newspaper did not hold
5 reserved seats intended for Conrad Burns supporters or accept money from Resodyn
6 Corporation.

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8 **Date complaint filed:** MUR 5827 – September 27, 2006; Supplement filed on
9 October 4, 2006; and MUR 5829 – September 29, 2006

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11 **Responses filed:** MUR 5827 – October 20, 2006; October 24, 2006; November 24, 2006;
12 MUR 5829 – October 20, 2006; and October 24, 2006.

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